IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 488 of 2004

For Approval and Signature:

HON'BLE MR. JUSTICE M.D. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL PARESHKUMAR CHATURDAS

Versus

PATEL KOKILABEN MANILAL

Appearance:

1. Criminal Revision Application No. 488 of 2004

Mr. Sanjeev D.Dave for NANAVATI &

NANAVATI for applicant.

MR PK JANI for Respondent No. 1

Mr.K.P.Raval, A.P.P. for Respondent No. 2

CORAM : HON'BLE MR. JUSTICE M.D. SHAH

Date of decision: 13/05/2005

ORAL JUDGEMENT

1. The facts giving rise to the filing of the present Revision Application by the present applicant-husband against whom an order of maintenance has been passed can be summarized as follows:

2. The applicant Patel Pareshkumar Chaturdas was wedded to the respondent no.1-Patel Kokilaben Manilal somewhere in the year 1989. On 22-11-1996 the wife filed an application being Criminal Misc. Application no.105 of 1996 in the Court of the learned J.M.F.C., Vadnagar, under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Code") seeking maintenance from her husband-the present applicant. The learned J.M.F.C., Vadnagar, after hearing the parties by his order dated 30th September, 2002 awarded maintenance of Rs.500/-per month from the date of the application i.e. 22-11-1996 and also ordered payment of cost of Rs.300/- to the wife. As per the said order of the learned J.M.F.C. Vadnagar, the applicant-husband was required to pay Rs.41,500/- towards arrears of maintenance and costs of Rs.300/- aggregating Rs.41,800/-. However, during pending of the application, the applicant-husband had already paid Rs.18,000/- and an amount of Rs.22,800/- remained as arrears of maintenance and costs. The opponent-wife made repeated demands calling upon the applicant-husband to pay up the said arrears of Rs.22,800/- but the applicant-husband had not paid any heed to the same, but challenged the order of the learned J.M.F.C., Vadnagar, before the Additional Sessions Court, Mehsana, vide Criminal Application no.193 of 2001 which came to be dismissed vide order dated 24-10-2003. Thereafter, the present opponent-wife preferred Criminal Misc. Application no.779 of 2003 before the Chief Judicial Magistrate, Mehsana, on 12-11-2003 praying for issuance of Jangam warrant for hearing the parties accepted the case of the opponent hearing the parties, accepted the case of the opponent wife and issued jangam warrant for Rs.22,800/-by his order dated 7-6-2004. It is this order of the learned Chief Judicial Magistrate which is the subject matter of challenge in the present Revision Application.

3. Learned Counsel Mr.Sanjeev D.Dave, for the applicant has strenuously argued that the order awarding maintenance in Criminal Misc. Application no.105 of 1996 passed by the learned J.M.F.C., Vadnagar, is dated 30-9-2002 while the order issuing jangam warrant for recovery of Rs.22,800/passed by the learned Chief Judicial Magistrate, Mehsana, is dated 12-11-2003, and as such the opponent wife is not entitled for maintenance which became due prior to 12-11-2002 as the same would be

barred by limitation as prescribed in the 2nd proviso appended to Section 125(3) of the Criminal Procedure Code. To substantiate his contention, Mr. Dave has invited my attention to the decision rendered by the High Court of Jharkhand in the case of Bhikhu Lal Giri v. Smt. Uma Devi and Anr.reported in JHRHC 1. I am not at all convinced that the said decision relied upon by the learned Counsel for the applicant-husband supports his contention. It is true that in the said judgment it has been observed that no warrant can be issued for recovery of due which accrued prior to 12 months of date of filing of petition for recovery of such arrears. It is pertinent to note here that subsequent to the order of maintenance the applicant-husband had preferred Criminal Revision Application no.193 of 2001 which came to be dismissed on 24-10-2003, and hence, the application for issuance of jangam warrant filed by the opponent-wife on 12-11-2003 vide Criminal Misc. Application no.779 of 2003 is well within the period of limitation.

4. Learned Counsel for the applicant next submitted that there was no stay order in operation against the order of maintenance passed by the learned J.M.F.C., Vadnagar, and therefore, the opponent wife ought to have filed the execution proceedings for recovery of maintenance within one year from the date of the order and that the revision is not a continuous proceedings. According to the learned Counsel, the recovery application filed by the opponent-wife is, therefore barred by limitation. I am not impressed with the said submission advanced by the learned Counsel. In order to resolve the controversy on hand, reference is required to be made to the decision rendered by this Honourable Court in the case of Parmar Chimanbhai Ghemabhai v. Pasiben d/o. Parmar Ghemabhai Haribhai & Anr. reported in 19 G.L.R. 983 wherein while dealing with identical issues, it has been observed at paragraph 7 of the judgment as under:

> "7. The first proviso to sub-sec. (3) of sec. 125 prescribes a period of limitation. The provisions in Chapter IX of the Code are for the welfare of neglected wives, children and parents. It is well known that the object of arming the Magistrate with the power to order payment of maintenance to a wife under this section is to prevent vagrancy. The statutory right conferred by this section is intended to compel the husband to honour his obligation to

provide food, shelter and clothing to his deserted wife to prevent her from going astray. These provisions are not in the nature of penal provisions but are welfare provisions and hence the rule of strict construction cannot be invoked. The first proviso, which enacts a rule of maintenance must, therefore, receive a liberal construction as it is not intended to come to the rescue of a defaulting husband who neglects to honour his obligations and seeks to avoid payment of maintenance to his wife though ordered by a competent court. According to sub-sec.(2) allowance can be ordered from the date of the order or from the date of the application for maintenance. One thing is however clear that unless there is an order for the payment of maintenance made by a competent court, the wife cannot expect to execute the order under sub-sec. (3) of sec.125 of the Code. It is only after a husband is ordered to pay maintenance and he fails to pay the same that a warrant can issue against the defaulter for noncompliance. The proviso then steps in and provides that no warrant shall issue for the recovery of any amount due unless the application is made within one year from the date on which it became due. Can it then be said that the amount of maintenance in respect of the period prior to the date of the order under sub-sec.1 became due even before the order was passed? Suppose a wife makes an application under sub-sec.(1) of sec.125 for maintenance on 1st January, 1975 and the application is ultimately disposed of by the learned Magistrate on 31st December, 1977 and by the order the maintenance becomes payable from the date of the application i.e. 1st January, 1975, can it be said that the remedy under sub-sec.(3) is barred in respect of the period from 1st January, 1975 to 31st December, 1976? It is difficult to hold that such was the intention of the Parliament in enacting the first proviso to sub-sec.(3) of sec.125 of the Code. The maintenance in respect of the period

> from 1st January, 1975 to 31st December, 1976 become due only after the order fixing the maintenance was passed by the learned Magistrate, for otherwise, the wife cannot seek to recover the amount from her husband even though she is not to blame for the delay in the disposal of the application. Therefore, so far as the amount of maintenance of the period prior to the date of the order is concerned, it becomes due from the date of the order under sub-sec.(1) of sec.125 of the Code. If the view canvassed before me on behalf of the husband is accepted, it would encourage the person against whom the order for payment of maintenance is proposed to be made to protract the proceedings with a view to rendering the claim in respect of the period exceeding one stale. Such cannot be and is not the legislative intent. Therefore, the expression " from the date on which it became due" must receive a liberal interpretation and be construed to mean " from the date on which it became recoverable". I am, therefore, unable to accept the contention urged before me by Mr. Parikh on behalf of the husband on the construction of the first proviso to sub-sec. (3) of sec.125 of the Code."

4.1 Thus, considering the observations made by our own High Court in the said authority, I am of the view that the application for issuance of Jangam Warrant filed by the wife on 12-11-2003 vide Criminal Misc. Application no.779/2003 cannot be said to be barred by limitation as the Criminal Revision Application no.193 of 2001 preferred by the applicant-husband came to be disposed of on 24-10-2003. If both the contentions raised by the learned Counsel for the applicant as aforesaid are to be accepted, then every person against whom an order of maintenance is made shall resort to prolong the proceedings with a view to avoid making payment of maintenance in respect of the period exceeding one year on the ground that it is barred by limitation. The intention of the legislature is not to come to the rescue of a defaulting husband who neglects to honour his obligations and seeks to avoid payment of maintenance to his wife but to protect the deserted wife to prevent her from going astray. In such circumstances, the Court has

also to bear in mind the plight of deserted woman in the society.

5. It was next argued by the learned Counsel for applicnt that the present opponent-wife has also filed H.M.P. no.104 of 1999 before the learned Civil Judge (S.D.), Mehsana, where also in a petition filed under Section 24 of the Hindu Marriage Act, the present opponent-wife is receiving interim maintenance of Rs.2300/- since 1999, and hence, the opponent wife cannot claim maintenance under Section 125 of the Criminal Procedure Code over and above the interim maintenance ordered and that the same is adjustable. In this connection reliance has been placed by the learned Counsel Mr. Nanavaty on the decision rendered by the Honourable Supreme Court in the case of Sudeep Chaudhary v. Radha Chaudhary reported in A.I.R 1999 S C 536 to point out that the amount awarded under Section 125 of the Criminal Procedure Code for maintenance was adjustable against the amount awarded in the matrimonial proceedings and was not to be given over and above the same. However, this submission also does not merit acceptance since this is not the subject matter of dispute so far as the recovery application is concerned and it was for the present applicant to take up this plea in the H.M.P proceedings. The authority cited by the learned Counsel Mr. Nanavaty cannot be of any help to him.

6. Mr. P.K.Jani learned Counsel for the respondent as also the learned A.P.P. have supported the order of maintenance passed by the learned trial Court in toto.

7. On the basis of the above discussion, I hold that there is no error of law in the impugned order which is just, proper and reasonable. The Criminal Revision Application therefore fails and is dismissed. The order for issuance of Jangam Warrant dated 7-6-2004 passed by the Chief Judicial Magistrate, Mehsana, shall stand stayed upto 17th June, 2005 and the present applicant-husband is directed to pay all arrears of maintenance within such date failing which interim stay shall automatically stand vacated. Rule is discharged.

(M.D.Shah,J.)

stanley-mds.